FEDERAL ARBITRATION LEGISLATION

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Under the Constitution of the United States the power to regulate interstate commerce is delegated to Congress, limiting to the several states the control and regulation of commercial intercourse wholly within their respective borders. The most general common carriers transporting commerce between the states are railroads, so legislation to prevent interruption to interstate commerce may properly be confined to them.

The first noteworthy interruption to railroad communication because of contentions between carriers and their employes occurred in the historic strike of 1877. Notwithstanding considerable injury and inconvenience resulting to participants and other citizens, Congress took no official note of the fact until the act of October 1, 1888, which authorized the selection and appointment of arbitrators upon the written proposition of either party to a controversy involving interstate carriers and their employes. This act provided that one arbitrator should be chosen by the carrier, one by employes and a third should be selected by these two arbitrators representing the parties to the controversy. This board had power to administer oaths, take testimony and investigate, mediate and arbitrate. The act also empowered the President at his discretion to select two commissioners, one at least to be a resident of the state in which the controversy arose, who, with the Commissioner of Labor, would constitute a temporary commission to examine causes of the controversy, conditions accompanying it, and the best means for adjusting it. The services of such commissioners could be tendered by the President voluntarily, requested by either participant, or even applied for by the executive of the state in which the difficulty arose.

Decisions of an arbitration board, also the findings of a commission, were to be made public, but the contesting parties might elect to abide by or disregard the decision reached, since the law placed no restraint whatever upon either party. However, no

effort was ever made to utilize its arbitration feature and but one commission was created to report upon a strike—that of 1894. In view of the restricted scope of this law it was repealed when the more comprehensive statute known as the Erdman Arbitration Act was passed June 1, 1898.

The Erdman Act applied to railroads and employes actually engaged in train operation, thereby embracing conductors, brakemen, engineers, firemen, switchmen and telegraphers. It provided that whenever a controversy seriously interrupted or threatened to interrupt interstate commerce, the chairman of the Interstate Commerce Commission and the Commissioner of Labor should, as mediators, upon request of either party, or both, use their best efforts by mediation and conciliation to settle the same amicably, but if unsuccessful, they should endeavor to have the controversy arbitrated under provisions of the act. In case of arbitration, a board of three members was to be selected as follows: one member to be named by the carrier; a second by the labor organization or committee representing the employes; and a third to be chosen by these two within five days. In case of failure to select the third arbitrator in this manner, he was to be named by the mediators. As a rule the selection of the third arbitrator proved difficult, since he had to be acceptable to both sides and in several instances when chosen was unwilling, or not in position, to serve. A copy of every agreement of arbitration after its execution by the contending parties, and being duly acknowledged before a notary public or clerk of a district or circuit court of the United States, was filed with the Interstate Commerce Commission for record.

Attempts were made, but without success, to invoke the provisions of this law in 1899 and in 1906. From 1907 to 1912 inclusive, the services of the mediators were made use of more frequently. In 1910 sixteen applications—the maximum in any one year—were made to the mediators for their friendly offices. From the passage of the law to December 31, 1911, a total of forty-eight cases were handled by the mediators, of which twelve were arbitrated. In only three of these cases were the two arbitrators able to agree upon the third, thus necessitating that the two mediators select the arbitrator.

After the arbitration board had been duly appointed, the statute required them to commence their hearings within ten days and

conclude their investigation and announce the award within thirty days from the time of appointment of the third arbitrator. Pending the arbitration, the status existing immediately prior to the dispute remained unchanged, except that no employe should be compelled to perform service without his consent. Upon completion of their work the arbitrators filed their award, with all papers, proceedings and testimony, in the clerk's office of the circuit court and their finding was conclusive upon both parties, unless temporarily suspended pending disposal of exceptions filed by either party within ten days thereafter, or unless the award was set aside for error of law by the circuit court or on appeal therefrom to the circuit court of appeals, whose decision was final. The law provided that employes displeased with the award should not quit, nor employers dismiss their employes within three months after such award was made, without giving each other thirty days' notice in writing of their intention. The award remained in effect for one year after it went into practical operation, and no new arbitration upon the same subject between the parties to the original controversy could be had within the year unless the award was set aside by a court of proper jurisdiction. The law provided no penalty in case the parties involved failed to comply with the findings of an award, but there was never an instance where either party disregarded the award of an arbitration board.

Other provisions in the act were: employes individually should not be heard by arbitrators unless the complaining employes constituted a majority of that grade and class in the service of the same employer; pending the outcome of the arbitration the employer should not discharge any employes, parties thereto, without sufficient cause, nor should an organization representing the employes order, aid or abet a strike; in every incorporation under United States statutes it must be provided in the articles of incorporation, constitution, rules and by-laws that members should be ousted in case they used force or violence during strikes, lockouts or boycotts, or sought to prevent others from working through violence, threats or intimidations; individual members should not be liable for the acts, debts or obligations of such incorporations or vice versa; and further, the act made guilty of a misdemeanor subject to stated penalties, any employer, officer or agent who required an employe to agree not to become a member of any labor organization,

or who threatened loss of employment, or discriminated against any employe because he belonged to or might become a member of a labor organization, or required an employe to contribute to any fund for charitable, social or beneficial purposes, or release his employer from legal liability for personal injury by reason of benefits received from such fund beyond the proportionate benefits resulting from the employer's contribution to such fund; or who, after having discharged an employe, attempted or conspired to prevent such employe or any employe, voluntarily quitting his position, from obtaining employment. Only one provision of the law specifically referred to employes as individuals who were not members of labor organizations; all other provisions related to organized as well as unorganized labor.

Under the law the mediators had no authority to intercede in any controversy, and could do so only upon request by one of the contending parties, provided the other agreed to accept intervention. Therefore, employes might quit or strike and carriers declare a lockout in the same manner as before the act was passed. Should one of the contestants decline to accept mediation or arbitration, there was no provision compelling him to submit.

The increased duties of the chairman of the Interstate Commerce Commission made it imperative that he be relieved of the work of mediator, and consequently, effective March 4, 1911, the President was authorized to designate from time to time any member of the Interstate Commerce Commission, or of the then Court of Commerce, to exercise the powers and duties imposed upon the chairman of the former. Accordingly, the presiding judge of the Court of Commerce, who had previously been a member and chairman of the commission, was appointed to exercise such duties.

Only three arbitrators could be chosen under the Erdman Act and as the arbitrators selected by each of the contestants would naturally favor, even though unintentionally, the party who appointed them, the third arbitrator, therefore, was to a greater extent the sole judge of the points at issue. This fact, with other exceptions, together with results in several arbitrations that were unsatisfactory to both carriers and employes, led to agitation for a revised law to overcome the objectionable features of the Erdman Act. After extended negotiations between railroad officials and conductors and trainmen of the eastern roads, with little prospect of

settlement, a conference was arranged at the White House July 14, 1913, at which railroad presidents and representatives of the railway brotherhoods were present, for the purpose of reaching an understanding as to their respective recommendations for strengthening and revising the existing law, and settling the pending differences under the revised statute.

The substance of the agreement reached was incorporated the following day into the Newlands Act, which repealed the Erdman law. While re-enacting the majority of the provisions of the Erdman law relating to mediation, the Newlands Act provides for a permanent United States Board of Mediation and Conciliation, composed of a commissioner who devotes his entire time to that office, an assistant commissioner, and two other officers of the government. The Newlands Act also provides that when controversies threaten interruption of traffic, either or both of the parties involved may request the services of the board, which is also authorized to proffer its services to the parties when the public interest will likely suffer. An arbitration board may consist of three or six arbitrators, as the contending parties elect; if three, they are chosen as they were under the Erdman Act, but when six are desired, two are selected by the carriers, two by the employes, and these four are empowered to choose the remaining two, but failing to do so within fifteen days after they first meet, the latter two, in case neither has been agreed upon, shall be named by the Board of Mediation and Conciliation.

The Newlands Act became effective July 15, 1913. From that date until May, 1916, fifty-six controversies have been adjusted by the board. Of this number forty-five were settled by mediation, and eleven by mediation and arbitration. In twenty cases employes made application to the board for its services, in thirteen cases, the railroads and in fifteen the railroads and employes made joint application. In eight instances, the board proffered its services, which were accepted.

With a permanent Board of Mediation and Conciliation, and with three or six arbitrators now optional, instead of only three as formerly, better results can be expected since the larger number is usually chosen, and the reasoning and conclusions of six persons are preferable to that of three. However, even with the advantages of the present law, the board has no power to require the parties to

a controversy to accept its services or postpone a strike or lockout until the differences may be properly investigated and the facts furnished the public. A striking example of this fact is the congressional action of September 2, 1916, passed as a last resort to avert an impending strike of far-reaching magnitude. Excluding the temporary restraint contained in this legislation either the railroads or their employes may, at any future time when they decide that their best interests would warrant and their resources are sufficient, declare a general strike or lockout, and resort to a test of strength, thus ignoring public opinion, the greatest arbiter of justice the world has yet known and inflict untold injury and suffering upon the greater majority of our citizens who would only be indirectly parties to such a controversy.